

Australia's approach to national implementation of the CWC

This paper sets out the main elements of Australia's national implementation strategy for the Chemical Weapons Convention (CWC).

Legislation

The *Chemical Weapons (Prohibition) Act 1994* was enacted on 25 February 1994. All parties in the Parliament supported the legislation. The provisions of the Act establishing the Chemical Weapons Convention Office (CWCO - Australia's national authority) and the position of its Director were proclaimed in February 1995. Other provisions of the Act took effect when the Convention entered into force on 29 April 1997.

In March 1998, the Parliament considered a group of amendments to the 1994 Act to refine its administration and to rectify certain problems identified during its initial implementation. These provisions of the *Chemical Weapons (Prohibition) Amendment Act 1998* came into force on 6 April 1998.

This legislation:

- (1) Gives effect to most of Australia's obligations, responsibilities and rights as a State Party to the CWC (a maximum penalty of life imprisonment is prescribed for breaches by individuals of the obligations in paragraphs 1 and 5 of Article I).
- (2) Provides for a system of permits and notifications as a legal framework for the compulsory provision of data to CWCO by facilities which produce or use scheduled chemicals, or which produce Discrete Organic Chemicals, in the quantities specified by the Convention, so that it can lodge declarations with the Technical Secretariat of the Organisation for the Prohibition of Chemical Weapons (OPCW).
- (3) Provides for routine inspections of declared facilities and challenge inspections of any facility or other place in Australia by OPCW inspectors to verify compliance with the CWC (access to facilities or other premises will be by consent or warrant issued by a Magistrate). OPCW inspectors will be accompanied at all times by a national inspector.
- (4) Provides for inspections by CWCO of facilities covered by the permit and notification systems to verify compliance with the Act. The Office also has the power to inspect any other facility with the occupier's consent or with a warrant issued by a Magistrate (if necessary), if the Office has reasonable grounds for suspecting that the facility is in breach of the legislation.
- (5) Provides for procedures should another State Party seek clarification concerning compliance with the convention by any facility or other place in Australia. Procedures could include a bilateral inspection by national inspectors and inspectors representing the State Party seeking clarification with the consent of the occupier of the premises.

Regulations have been prepared to prescribe procedures and details of other arrangements provided for in the Act, including privileges and immunities required by the Convention for OPCW inspectors.

Certain approved procedures and forms, which mainly relate to gathering of information for declarations to the OPCW, are not required to be put into regulations but nevertheless are subject to Parliamentary scrutiny.

Other aspects of the CWC which require legislation are dealt with under existing legislation, in particular:

- . Customs (Prohibited Exports) Regulations and Customs (Prohibited Imports) Regulations, to enforce CWC obligations in relation to export and import controls on scheduled chemicals, and
- . *International Organisations (Privileges and Immunities) Act 1963* to recognise the OPCW as an international organisation.

Ratification

Australia's instrument of ratification was deposited with the UN Secretary-General, as the Depositary specified in Article XXIII of the CWC, on 6 May 1994. Australia thereby became the sixth country to ratify the CWC, and the second country to do so from the Asia-Pacific region. (Fiji was the first country to ratify.)

National Authority

Rather than creating a totally new body, CWCO was established in the Department of Foreign Affairs and Trade as a non-statutory unit co-located with the Australian Safeguards Office (ASO) - Australia's national nuclear safeguards authority. The Director of Safeguards, a statutory office holder under the *Nuclear Non-Proliferation (Safeguards) Act 1987* was appointed Director of CWCO in early 1995, and reports directly to the Minister for Foreign Affairs on both CWC and safeguards matters.

When the decision was made to co-locate CWCO with ASO it was envisaged that the two organisations would be complementary, with the knowledge and experience that ASO has built up over 20 years as Australia's national safeguards authority making a valuable contribution to the work of the new Office.

CWCO has the equivalent of one and a half full-time staff. The formal task of Controller of Permits and Notifications as defined by the *Chemical Weapons (Prohibition) Act 1994* falls to the section head position, titled Head, CWC Implementation. A second officer is shared with ASO. The jobs have a considerable regulatory content and require good administrative skills, along with the ability to effectively communicate the purpose and functioning of our legislation (and the CWC) to industry. Ideally, CWCO staff should combine technical competence and knowledge of industry with the sorts of skills necessary to analyse and develop relevant policy, and to administer CWCO's regulatory functions. Officers should be able to act as national inspectors.

CWCO's Director can appoint national inspectors who are not full time staff of the Office, and can contract with external consultants to assist with CWCO's work. This allows other relevant government officers, or persons with experience in chemical industry (perhaps retired from full time work), to act as national inspectors, or to assist CWCO on a contract basis, adding to the Office's capabilities at minimal cost.

System of Permits and Notifications

As part of its responsibility for national implementation of the Convention, CWCO administers the permit and notification systems set up by the *Chemical Weapons (Prohibition) Act*. Permits are required by operators of all facilities if they wish to, or are likely to produce or use scheduled chemicals in quantities above the relevant thresholds (if any) in the current or forthcoming year. This is considered to be the most effective way of monitoring production or use and ensuring the provision of relevant information for Australia's declarations to the OPCW.

With respect to Schedule 1 chemicals, permits are required for facilities in accordance with part VI of the CWC's Verification Annex (ie. facilities producing schedule 1 chemicals in excess of 100 grams per annum, or for protective purposes). Permits are also required for facilities producing Schedule 1 chemicals for medical, research or pharmaceutical purposes in quantities less than 100 g.

The Act also requires a permit for a facility which acquires, retains, uses or transfers each year more than 100 grams of Schedule 1 chemicals, but which does not produce Schedule 1 chemicals. This provides CWCO with data to enable it to monitor the national aggregate quantity of Schedule 1 chemicals, although it is unlikely Australia would ever come close to the 1 tonne limit imposed by the Convention.

Permits are approved by the Minister for Foreign Affairs or the Director of CWCO as delegate. The Minister also has the power to renew, transfer or revoke a permit.

Notification is required by producers of unscheduled Discrete Organic Chemicals, or by facilities which had a permit in the previous year but do not require a permit in the current year.

National inspectors usually visit permit facilities or facilities subject to the notification procedures to brief them on the CWC's impact for them, and where necessary, to verify compliance with the legislation. If facilities will be subject to routine inspection by the OPCW, they are advised on their rights and obligations in relation to such inspections, including the Convention's managed access provisions. To ensure OPCW inspections run smoothly, CWCO works with relevant facilities to prepare them for the possibility of inspection.

CWCO has arrangements with other Government agencies to facilitate entry into Australia by OPCW inspection teams.

CWCO's Director is required to make an annual report to the parliament.

Export and import of CWC Scheduled chemicals

To meet the CWC's requirements in relation to international trade in scheduled chemicals, Australia has implemented appropriate changes to existing regulations under the *Customs Act 1901* to cover exports of all CWC Scheduled chemicals, and imports of Schedule 1 chemicals.

Australia requires licences for exports of CWC Scheduled chemicals to all destinations, as well as for the additional chemicals previously controlled under Customs (Prohibited Exports) Regulation 13D. The Strategic Trade Policy and Operations Section of the Department of Defence is responsible for issuing licences.

The requirements of the CWC's Verification Annex in relation to import of Schedule 1 chemicals have been implemented through a Customs (Prohibited Imports) Regulation. Licences are issued by CWCO. Amendment of this regulation will be used to implement the obligation, three years after entry-into-force, to allow Schedule 2 chemicals to be imported only from States Parties.

The CWC requirement to declare aggregate annual figures for imports of Schedule 2 and 3 chemicals is implemented by compiling information from industry surveys with trade statistics collected by the Australian Customs Service.

To enable the collection of statistical data on imports of Schedule 2 and 3 chemicals, it is important to ensure that all shipments of scheduled chemicals into and out of Australia can be readily identified. Australia uses an 8-10 digit system of numerical codes to classify traded commodities. This is based on the (6 digit) Harmonised Commodity Description Encoding System (HS), administered internationally by the World Customs Organisation (WCO). The OPCW Preparatory Commission requested WCO to amend the HS to create individual identification codes for all CWC Scheduled chemicals, and WCO is examining formal changes to the HS in the year 2002. For the interim, WCO has recommended to its Contracting Parties the adoption of appropriate changes in their national statistical nomenclatures. Australia implemented changes to its import code system on 1 January 1997.

Consultation with chemical industry

The Department of Foreign Affairs and Trade had contact with the Australian chemical industry (through industry associations) throughout the CWC negotiations and the early development of Australia's implementation plans. The industry has been supportive of the CWC and has assisted with trial inspections of commercial facilities.

CWCO has continued these consultations, and intensified them at the level of individual companies. In the lead-up to entry-into force, the Office expanded the program of consultation with industry associations on the Convention's impact on Australia's chemical industry, and disseminated information through the associations, as well as through publications circulating in industry. Most companies directly affected by the CWC have been visited to explain the Convention's impact. Such personal contact has advantages in ensuring continued commitment by industry to Convention requirements.

In January 1996 CWCO produced a booklet on the CWC as a guide for Australian industry, and distributed it to all companies likely to be affected by the Convention. Revisions were published in January 1997 and May 1998. The Office has also produced shorter leaflets which aim to assist companies and organisations in identifying if they are affected by the CWC.

CWCO publishes information for industry and the public through the Department's internet site. This can be found at <http://www.dfat.gov.au/cwco>.

Industry Surveys

In preparation for the establishment of the system of permits and notifications required by the Chemical Weapons (Prohibition) Act, CWCO carried out surveys of Australian companies and organisations whose activities might be relevant to the CWC's industry declaration requirements.

Australia's major industry survey was carried out during 1995. Many of the recipients of a 1991 survey carried out by the Department of Foreign Affairs and Trade were again targeted in that survey. The list of companies targeted in 1991 was built on in several ways, to update it, and to expand its coverage. New entries were obtained from the following sources:

- membership lists of 10 chemical industry bodies
- contact lists from other chemical regulators in Australia
- telephone directory listings on CD-ROM
- chemical industry directory listings.

This information was collated into a list of 2500 organisations who were sent a survey package in February 1995 seeking information relevant to activities with Scheduled chemicals during 1994, or which produced discrete organic chemicals. In addition to the chemicals which are individually listed in the CWC schedules, the survey listed a number of chemicals which belong to the family of chemicals specified in Schedule 2 item 4, and which have been registered for use in Australia.

The 1995 survey sought information based on lower reporting thresholds than those specified in the CWC text. This additional information was used by CWCO to provide "baseline data" and to allow national monitoring of "sub-threshold" facilities. Around 60% of survey forms were completed and returned without prompting, which by all accounts was a good response. We believe that a significant factor here was that the accompanying documentation clearly explained the purpose of the CWC and its relevance to chemicals in commercial use.

Follow-up action was necessary with a significant proportion of respondents to the 1995 survey to clarify the nature of their organisation's activities, especially where possible organic production was involved. The process of assessing responses also led to the issue of survey forms to a number of companies not previously targeted.

Information from importers of Schedule 2 chemicals was especially useful in identifying companies processing these chemicals.

From experience gained in the 1995 survey, a new simplified survey approach was developed for making first contact with companies. The simplified approach proved very successful, in that it was better received by industry, and elicited more useful responses. It was used for a 1996 survey of about 600 companies and organisations. It is clear that further surveys of industry will need to be carried out at regular intervals to ensure that the system of permits and notifications continues to cover all relevant activities in Australia and that declarations to the OPCW remain accurate.

Inspections

Five trial inspections of commercial facilities and three of defence facilities were conducted in Australia in preparation for entry-into-force of the CWC. The results of these inspections demonstrated that inspections cause no loss of production at commercial facilities, and little disruption to the operation of defence facilities, and that the CWC's managed access provisions are effective.

As of May 1998, Australia had received two OPCW inspections of facilities declared under Article VI of the CWC. The first was of a defence research facility which produces very small quantities of Schedule 1 chemicals for protective research. The second was of a commercial industry facility which had in the past processed a Schedule 2B chemical. A facility agreement was negotiated with the OPCW in relation to the Schedule 1 facility, but not in relation to the Schedule 2 facility.

Regional Consultation

Since 1988 Australia has engaged in discussions with countries within the South East Asian and South Pacific regions on the CWC, initially on the CWC negotiations, and later on the Convention itself. Seminars, together with a technical workshop have provided countries within Australia's region with the opportunity for detailed discussion on all aspects of CWC implementation. Australia's dialogue with neighbouring countries on CWC implementation is being maintained so that the experience already gained by our authorities and industry can be shared with regional governments and industry as they move through the steps required to implement the CWC at the national level.